

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the matter of

Implementation of Section 621(a)(1) of the Cable  
Communications Policy Act of 1984 as amended  
by the Cable Television Consumer Protection and  
Competition Act of 1992

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MB Docket No. 05-311  
April 19, 2007

**COMMENTS OF THE CITY OF BOSTON, MASSACHUSETTS  
IN RESPONSE TO THE FURTHER NOTICE  
OF PROPOSED RULEMAKING**

These Comments are filed on behalf of the City of Boston and the Issuing Authority, Mayor Thomas M. Menino. The City of Boston submits these comments in response to the Further Notice of Proposal Rulemaking, released March 5, 2007, in the above-captioned rulemaking (“Further Notice”).

1. Boston, Massachusetts is a city with a population of 600,000. Our franchised cable provider is Comcast Corporation and our Open Video System (OVS) over-builder is RCN. Our Regional Bell Operating Company (R-BOC) is Verizon of Massachusetts. Our community has negotiated cable franchises since 1982 and we issued our first OVS agreement in 1996.

2. We support and adopt the comments of the U.S. Conference of Mayors (USCM), the National Association of Telecommunications Officers and Advisors (NATOA), the National League of Cities (NLC), the National Association of Counties (NACo), and the Alliance for Community Media (ACM) filed in response to the Further Notice.

3. We oppose the Further Notice’s tentative conclusion (at ¶ 140) that the findings made in the FCC’s March 5, 2007 Order in this proceeding should apply to incumbent cable operators, whether at the time of renewal of those operators’ current franchises, or thereafter. This proceeding is based on Section 621(a)(1) of the Communications Act, 47 U.S.C. § 541(a)(1), and the rulings adopted in the Order are specifically, and entirely, directed at

“facilitat[ing] and expedit[ing] entry of new cable competitors into the market for the delivery of video programming, and accelerat[ing] broadband deployment” (Order at ¶ 1).

4. We disagree with the rulings in the Order, both on the grounds that the FCC lacks the legal authority to adopt them and on the grounds that those rulings are unnecessary to promote competition, violate the Cable Act’s goal of ensuring that a cable system is “responsive to the needs and interests of the local community,” 47 U.S.C. § 521(2), and are in conflict with several other provisions of the Cable Act. But even assuming, for the sake of argument, that the rulings in the Order are valid, they cannot, and should not, be applied to incumbent cable operators. By its terms, the “unreasonable refusal” provisions of Section 621(a)(1) apply to “additional competitive franchise[s],” not to incumbent cable operators. Those operators are by definition already in the market, and their future franchise terms and conditions are governed by the franchise renewal provisions of Section 626 (47 U.S.C. § 546), and not Section 621(a)(1).

5. The City of Boston has demonstrated a strong track record of efficient management as a Local Franchising Authority (LFA). We question both the legality and the necessity of the Federal Communications Commission (FCC) in adopting new rules relative to the implementation of Section 621(a)(1) at this time. Section 621(a)(1) was adopted in 1984 and revised in 1992, and the Telecommunications Act of 1996 further redefined the video marketplace and who might enter. It would appear that currently scheduled hearings before Congressional committees indicate that Congress has already decided that franchising and competition are within their purview should they decide to pursue it.

6. Boston amended (1988) and renewed (1998) the original cable franchise (1982) of Cablevision Systems Corp., and amended and transferred (2002) the Renewal License to Comcast. Overbuilder RCN originally launched their competition in Boston as an OVS in 1996. At that time, RCN was a partner in a limited liability venture with Boston Edison, our local electric company. Subsequently, the incumbent cable provider sued both RCN and Edison, as well as the City, challenging their access to the Public Right of Way provided through the city’s Public Improvement Commission. The U. S. District Court rejected the motion in preliminary hearings. In 1999, RCN’s OVS became our second cable franchise. But, following their Chapter 11 bankruptcy restructuring, RCN reverted back to OVS status with City approval.

7. Under the direction of Mayor Thomas M. Menino to support and encourage the introduction of new technologies and competition, the city administration established an Office

of Telecommunications as a point of entry and liaison for the broadband, wireless and telecommunications entities seeking to conduct business and provide services in Boston.

8. Through its Public Improvement Commission (PIC), Boston established the first fiber optic policy within city government for its Public Right of Way (PROW) management. The Lead Company Policy for underground deployment was adopted in 1994 and has been amended a number of times through the years in order to accommodate the changing needs of the industry while protecting the right of way. It was this policy's collaborative foundation, and the flexibility and understanding of our PIC commissioners, that became a model for other local governments to follow.

9. Verizon's choice of communities that it has pursued for franchising appears to reveal a decision not to pursue franchising in major cities. If and when this strategy changes, the City of Boston stands ready to expedite the process.

10. Boston has met a number of times over the last four years with Verizon of Massachusetts to discuss system upgrades, new services and the potential for cable franchising. These meetings go above and beyond the weekly sessions before the PIC for PROW management. Rather, the purpose has been a mutual dialogue on how best to assist Verizon as they enter their new video market and provide competitive service in Boston.

11. Verizon has declined the City's repeated encouragement to enter a cable franchise negotiation, opting instead to pursue a moderately-paced rebuild of existing plant and line drops at the neighborhood level of city subdivision. The City has attempted to educate Verizon about the informal and expedited franchising processes available in order to counter the erroneous perception that cable franchising is somehow burdensome.

12. On the national and local level, we have heard much discussion about the burden of the franchising process in the communities that Verizon intends to serve as a video provider under Title VI. Verizon has pursued franchising in 45 smaller and mostly suburban Massachusetts communities under existing franchise rules. News reports this week indicate that Verizon will not pursue additional Massachusetts franchising while legislation is pending to adopt statewide franchising rules (*see The Boston Globe, April 18, 2007, p.1, Carolyn Johnson, "Verizon suspends push for Mass. TV franchises; Firm criticizes licensing process."*) Yet a number of Massachusetts communities in these same news reports expressed a strong desire to expedite the negotiation process but found that Verizon was holding it up. Boston shares their

frustration. And we recognize that Verizon fails to mention that, as universal providers of telephony service under Title II in these very same communities, they already have the infrastructure, as well as the field and technical services and administrative support capable of overcoming any perceived obstacle. Verizon has had 100 years to do what cable companies have built over the last 25 years in our City.

13. We strongly endorse the Further Notice's tentative conclusion (at para. 142) that Section 632(d)(2) (47 U.S.C. § 552(d)(2)) bars the FCC from "preempt[ing] state or local customer service laws that exceed the Commission's standards," and from "preventing LFAs and cable operators from agreeing to more stringent [customer service] standards" than the FCC's. Our state cable laws and local franchises combine to provide local government with the means to address local customer service issues and appropriately oversee the operations of cable service providers in the interest of local residents. Cable customers in our city express appreciation for the informed and knowledgeable response they receive from locally situated customer service staff. Staffers in our city Cable Office also recognize the value of those customer service representatives who are familiar with local geography, topography and cable plant. In a city with two Washington Streets, three Warren Streets and three Warren Avenues, local knowledge is key.

14. The local cable franchising process in Massachusetts works well for our communities and our providers. Working with the industry, we seek to see that the needs of our local residents and communities are met while we balance the business needs of cable providers to utilize the Public Right of Way.

Respectfully submitted,  
City of Boston, Massachusetts

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